



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 23, 2004**

#### **Call to Order**

The regular meeting of the Sussex County Council was held Tuesday, March 23, 2004, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Dale R. Dukes</b>	<b>President</b>
<b>Finley B. Jones, Jr.</b>	<b>Vice President</b>
<b>Lynn J. Rogers</b>	<b>Member</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Robert L. Stickels</b>	<b>County Administrator</b>
<b>David Baker</b>	<b>Finance Director</b>
<b>James D. Griffin</b>	<b>County Attorney</b>

#### **M 182 04 Approve Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to approve the Agenda of March 23, 2004.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

#### **M 183 04 Approve Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to approve the minutes of March 16, 2004.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

#### **Corre- spondence**

Mr. Griffin read the following correspondence:

**GIRL SCOUTS OF THE CHESAPEAKE BAY COUNCIL, INC.,  
NEWARK, DELAWARE.**

**RE: Letter in appreciation of grant.**

**DUCKS UNLIMITED, DOVER, DELAWARE.**

**RE: Letter in appreciation of grant.**

**LAUREL HISTORICAL SOCIETY, LAUREL, DELAWARE.**

**RE: Letter in appreciation of grant.**

**Memo-  
randum  
of Under-  
standing/  
Office of  
the State  
Fire  
Marshal/  
Cul-de-sac  
Minimum  
Width**

Mr. Preston, Mr. Ingle, and Mr. Ward of the Office of the State Fire Marshal were in attendance to discuss a Memorandum of Understanding between the State of Delaware, Office of State Fire Marshal and the Sussex County Council.

Mr. Stickels stated that the purpose of the Memorandum of Understanding (MOU) is to establish a document, which will enhance the delivery of public services to the citizens of Sussex County in their contacts with the fire official and with the County Engineer, with respect to cul-de-sac minimum paved radii. The MOU proposes the widening of all Sussex County street dimensions greater than that required by State regulations for the purpose of making developments more accessible for fire and emergency apparatus. Mr. Stickels stated that with respect to cul-de-sac minimum pavements, the County Engineering Department's current standard is a minimum of 35 feet. It is proposed that the minimum cul-de-sac radius be increased to 38 feet.

Mr. Preston stated that there has been a discrepancy with the Office of State Fire Marshal's fire prevention regulations and the Sussex County Code.

Mr. Stickels reported that the County Engineering Department is in agreement with this proposal.

**M 184 04  
Execute  
MOU  
with  
Office  
of State  
Fire  
Marshal**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to authorize the Sussex County Council President to execute a Memorandum of Understanding between the State of Delaware, Office of State Fire Marshal, and the Sussex County Council regarding the minimum width for cul-de-sacs and subdivisions.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Sussex  
County  
Fire  
Service/  
Minimum  
Road**

Mr. Cole commented on subdivisions that have put in bike paths and taken some of the road width to do this.

Mr. Stickels discussed a memo from Steve McCabe, Director of Public Works, Sussex County Engineering Department. The memo refers to the following requests made by the fire service in Sussex County through the

**Width  
Requests**

**Office of the State Fire Marshal:**

- that the minimum one-way traffic pavement be widened from 10 feet to 20 feet.
- that the two-way traffic minimum pavement width be widened from 20 feet to 24 feet.
- that the minimum interior drive or multi-family travelway (non-right of way street) pavement width be widened from 25 feet to 30 feet.
- that the minimum paved radius for cul-de-sacs be widened from 35 feet to 38 feet. (This request has been addressed by the approval of the Memorandum of Understanding.)

**Sussex  
County  
Fire  
Service  
Requests**

(continued)

Mr. Stickels stated that he has asked Councilman Jones to ask the Firemen's Association to appoint a Committee to meet with developers to discuss their requests. Mr. McCabe will represent the County on this Committee.

**Waste-  
water  
Facilities**

Mr. Stickels discussed wastewater facilities to be constructed in the North Millville Sanitary Sewer District and the South Bethany Sanitary Sewer District.

**M 185 04  
Execute  
Agreements/  
Creekside**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 327, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Caldera Properties, L.P. for wastewater facilities to be constructed in Creekside, located in the North Millville Sanitary Sewer District.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**M 186 04  
Avon  
Park**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 364, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Gulfstream Development Corporation for wastewater facilities to be constructed in Avon Park – Phase II, located in the South Bethany Sanitary Sewer District.

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**M 187 04**      **A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the**  
**Execute**      **recommendation of the Sussex County Engineering Department, for Sussex**  
**Agreements/**      **County Project No. 81-04, Agreement No. 353, that the Sussex County**  
**Waterside**      **Council execute a Construction Administration and Construction**  
      **Inspection Agreement between Sussex County Council and Bethany Proper,**  
      **G.P., LLC, for wastewater facilities to be constructed in Waterside, Phase**  
      **IV, located in the South Bethany Sanitary Sewer District.**

**M 187 04**      **Motion Adopted:      5 Yea.**  
**(continued)**

**Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
      **Mr. Rogers, Yea; Mr. Jones, Yea;**  
      **Mr. Dukes, Yea**

**Adminis-**      **Mr. Stickels read the following information in his Administrator's Report:**  
**trator's**  
**Report**      **1.      Delaware Department of Transportation Public Workshops**

**The Delaware Department of Transportation will be conducting two**  
**Public Workshops in Sussex County. The first will be held on**  
**March 30, 2004, regarding the Bethany Beach Pedestrian and**  
**Bicycle Study. The workshop will be held from 3:00 p.m. to 6:00**  
**p.m. at the Bethany Beach Town Hall Building, 214 Garfield**  
**Parkway, Bethany Beach, Delaware. The purpose of the workshop is**  
**to review bicycle and pedestrian data collected in August 2003 and**  
**show possible bicycle and pedestrian treatments that can be**  
**implemented throughout Bethany Beach. The study team will also**  
**be soliciting public input as to how and where these treatments**  
**would work.**

**The second workshop will be held on Wednesday, March 31, 2004,**  
**from 4:00 p.m. to 7:00 p.m. in the cafeteria at the Delmar High**  
**School/Middle School, 200 North 8<sup>th</sup> Street, Delmar, Delaware,**  
**regarding Bridge 3-328 on Sussex Road 454 over Figgs Ditch, Sussex**  
**County. The proposed construction on Bridge 3-328 would include**  
**the replacement of three existing 48-inch corrugated metal pipes**  
**with a 10-foot by 5-foot concrete box culvert bridge. During**  
**construction Road 454, also known as Oak Branch Road, will be**  
**closed for approximately 60 days and a traffic detour will be posted.**  
**Additional work includes widening 225 feet of roadway,**  
**reconstructing the approaches to the bridge, and placing riprap in**  
**the stream.**

**2.      Beneficial Acceptance**

**The Engineering Department granted Beneficial Acceptance on**  
**February 18, 2004, for Sussex County Project No. 81-04, West**  
**Rehoboth Expansion of the Dewey Beach Sanitary Sewer District,**  
**CHS Associates, Agreement No. 267. A fact sheet for the project is**  
**included with this report.**

3. Clerk of the Peace

Adminis-  
trator's  
Report  
(continued)

Governor Ruth Ann Minner has appointed Mrs. Thelma Monroe of Millsboro to replace Mr. Ray Ellerman as Clerk of the Peace. The vacancy was created as a result of Mr. Ellerman's death. Mrs. Monroe has served 15 years as Mayor of Millsboro and is currently Chairman of the Sussex County Democrat Club. Mrs. Monroe has shown interest in holding this office, as she ran unsuccessfully against Mr. Ellerman. Mrs. Monroe is to be sworn in on Tuesday, March 23, 2004, by Superior Court Resident Judge Henley Graves.

4. Building Code Workshop

The third in a series of workshops that have been scheduled in regard to the conversion to the 2003 International Building Code will take place on Saturday, March 27, 2004, from 9:00 a.m. to 12:00 p.m. at the CHEER Center located on Sand Hill Road in Georgetown. Property owners, builders, contractors, engineers, and architects are encouraged to attend this workshop.

HPG  
Program

Mr. LeCates, Director of Community Development and Housing, discussed a pre-application to the United States Department of Agriculture, Rural Housing Services, for a Housing Preservation Grant to assist ten very low and two low income homeowner occupants in the preservation of their homes. The primary objective of the HPG Program is the development of viable communities, including decent housing and a comfortable living environment, principally for persons of low and very low income.

Mr. Lecates reported that the following projects would be included in the pre-application:

	<u>Target Areas</u>	
	<u>Sussex</u>	<u>Kent</u>
Housing Rehabilitation Grants	\$20,000	\$20,000
Administration	\$ 5,000	\$ 5,000

Mr. Lecates reported that the notice of approval should be received in June, after which time an advertisement will announce the availability of funds and acceptance of applications.

M 188 04  
Adopt  
Resolution  
No.  
R 012 04

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt Resolution No. R 012 04 entitled "ENDORISING PROJECT TO BE SUBMITTED TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICES, FOR FUNDING AND AUTHORIZING ROBERT L. STICKELS, COUNTY ADMINISTRATOR,

**TO SUBMIT PRE-APPLICATION”.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Airport  
Terminal  
Apron/  
Change  
Order**

**Mr. Sapp, Project Engineer, discussed Change Order No. 2 to the Sussex County Airport Terminal Apron Expansion Project. Mr. Sapp reported that the project has been completed and that the change order is a balancing change order in the credit amount of \$25,669.92. He noted that material quantities were under-run resulting in a decrease in the estimated contract price.**

**M 189 04  
Approve  
Change  
Order/  
Airport  
Terminal  
Apron**

**A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Balancing Change Order No. 5 for Project #01-09, Sussex County Airport Terminal Apron Expansion, for -\$25,669.92, to decrease the contract amount from \$843,582.75 to \$817,912.83, contingent upon the approval of DelDOT and the FAA.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Airport  
P.A.P.I.  
and  
R.E.I.L.  
Lights  
Project/  
Change  
Order**

**Mr. Sapp, Project Engineer, discussed Change Order No. 2 to the Sussex County Airport Project entitled “Furnish and Install P.A.P.I. and R.E.I.L. Lights. Mr. Sapp explained that the Change Order, in the amount of \$5,565.97, is due to factors affecting time of completion. He reported that the removal of aerial obstructions off of the airport property has taken enough time that material prices have increased and the prices quoted in 2002 are no longer in effect. Mr. Sapp also reported that the contractor needs to extend the contract time.**

**M 190 04  
Approve  
Change  
Order/  
Airport  
P.A.P.I.  
and  
R.E.I.L.  
Project**

**A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Change Order No. 2 for Project Number 02-06, Sussex County Airport, Furnish and Install P.A.P.I. and R.E.I.L. Lights, to increase the current contract in the amount of \$5,565.97, from \$75,730.00 to \$81,295.97, and to extend the contract by 462 days, of which the Contract will end on June 7th, 2004, pending approval from the FAA and DelDOT.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;**

**Mr. Dukes, Yea**

**Item Tabled**                      **The agenda item entitled “Sussex County Airport, T-Hangars, Change Order No. 2” was tabled.**

**Public Hearing**                      **A Public Hearing was held to consider extending the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District (WRE) to include part of a single parcel of land (Beebe Medical Center) east of State Route 24 (John J. Williams Highway). Mr. Archut, Assistant County Engineer, reported that Beebe Medical Center has requested that the County provide sewer service for the new Oncology Center. (A conditional use application is currently pending.)**

**Public Hearing/**                      **Mr. Archut advised that Beebe Medical Center will be asked to sign a Memorandum of Understanding obligating them to pay front footage charges and system connection charges.**

**Beebe Medical Center Expansion/**                      **Mr. Monihan, Vice President, Beebe Medical Center, told Council that it is proposed that the Tunnell Cancer Center will be moved to the site and that the site will primarily provide out-patient services.**

**West Rehoboth Sanitary Sewer District**                      **There were no public comments and the Public Hearing was closed.**

**M 191 04**                      **A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt**  
**Adopt**                      **Resolution No. R 013 04 entitled “A RESOLUTION TO EXTEND THE**  
**Resolution**                      **BOUNDARY OF THE WEST REHOBOTH EXPANSION OF THE**  
**No.**                      **DEWEY BEACH SANITARY SEWER DISTRICT (WRX) TO**  
**R 013 04**                      **ENCOMPASS PART OF A SINGLE PARCEL OF LAND EAST OF**  
**STATE ROUTE 24 (JOHN J. WILLIAMS HIGHWAY), LYING**  
**CONTIGUOUS TO THE WRX, AND BEING IN LEWES - REHOBOTH**  
**HUNDRED, SUSSEX COUNTY, DELAWARE”.**

**Motion Adopted:        5 Yea.**

**Vote by Roll Call:        Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Rogers, Yea; Mr. Jones, Yea;**  
**Mr. Dukes, Yea**

**M 192 04**                      **A Motion was made by Mr. Jones, seconded by Mr. Rogers, to authorize the**  
**Execute**                      **Sussex County Council President to execute a Memorandum of**  
**MOU**                      **Understanding with Beebe Medical Center to provide wastewater**  
**with**                      **transmission and treatment service for their Radiation Oncology Center.**

**Beebe Medical Center**                      **Motion Adopted:        5 Yea.**

**Vote by Roll Call:        Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Rogers, Yea; Mr. Jones, Yea;**  
**Mr. Dukes, Yea**

- Grant Requests**      **Mr. Stickels presented grant requests for the County Council's consideration.**
- M 193 04 Councilmanic Grant**      **A Motion was made by Mr. Rogers, seconded by Mr. Jones, to give \$100.00 from Mr. Rogers' Councilmanic Account to Casa San Francisco for the Silent Auction which will benefit their shelter program and crisis assistance/homeless prevention program.**
- M 193 04 (continued)**      **Motion Adopted:      5 Yea.**
- Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
                                 **Mr. Rogers, Yea; Mr. Jones, Yea;**  
                                 **Mr. Dukes, Yea**
- M 194 04 Councilmanic Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$150.00 (\$75.00 each from Mr. Phillips' and Mr. Dukes' Councilmanic Accounts) to the Laurel Intermediate School for the Annual Science Fair.**
- Motion Adopted:      5 Yea.**
- Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
                                 **Mr. Rogers, Yea; Mr. Jones, Yea;**  
                                 **Mr. Dukes, Yea**
- M 195 04 Councilmanic Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$200.00 (\$100.00 each from Mr. Dukes' and Mr. Phillips' Councilmanic Accounts) to the Laurel Alumni Scholarship Foundation, Inc. for scholarship funding.**
- Motion Adopted:      5 Yea.**
- Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
                                 **Mr. Rogers, Yea; Mr. Jones, Yea;**  
                                 **Mr. Dukes, Yea**
- M 196 04 Councilmanic Grant**      **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$300.00 (\$150.00 each from Mr. Phillips' and Mr. Cole's Councilmanic Accounts) to the Indian River Baseball Boosters for the purchase of uniforms and equipment.**
- Motion Adopted:      5 Yea.**
- Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
                                 **Mr. Rogers, Yea; Mr. Jones, Yea;**  
                                 **Mr. Dukes, Yea**
- M 197 04 Youth Activity Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$100.00 from Mr. Phillips' Youth Activity Grant Account to Delmarva Heat Softball Team for operating expenses.**
- Motion Adopted:      4 Yea, 1 Abstention.**



**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Abstained;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Item Tabled**                      **The funding request from the Rehoboth Beach Museum was tabled and will be taken under advisement.**

**Public Hearing/  
Route 24  
Expansion/  
West**                      **A Public Hearing was held to consider extending the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District (WRE) to include two parcels of land on County Road 275 (Plantations Road) and State Route 24 (John J. Williams Highway).**

**Rehoboth  
Sanitary  
Sewer  
District**                      **Mr. Archut, Assistant County Engineer, reported that one of the two parcels is owned by Hudson Homes and is currently zoned C-1; it is proposed that 81 units will be constructed on the site. The other parcel, consisting of 32.79 acres, is owned by Anderson Homes and is approved for a MR-RPC for 101 units.**

**Mr. Cole expressed concern that, if the expansion is approved, Hudson Homes will be able to put 12 units per acre on the site.**

**Mr. Archut stated that the approval of this annexation would not cause additional problems although it will hasten the need for improvements to the wastewater facility.**

**Public comments were heard. William Payne stated that septic systems in the proposed annexation area are polluting the Inland Bays and that the County should annex on a broader scale and not piece by piece. He also stated that The Plantations should be a part of the sewer district.**

**Mr. Archut responded that The Plantations opted out of being included in the sewer district and that they have their own sewer system. He noted however that a North Coastal Planning Study would be performed, which will provide a comprehensive review of all areas from Lewes to Oak Orchard.**

**There were no further public comments and the Public Hearing was closed.**

**M 198 04  
Adopt  
Resolution  
No.  
R 014 04**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Resolution No. R 014 04 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE WEST REHOBOTH EXPANSION OF THE DEWEY BEACH SANITARY SEWER DISTRICT (WRX) TO ENCOMPASS TWO PARCELS OF LAND ON COUNTY ROAD 275 (PLANTATIONS ROAD) AND STATE ROUTE 24 (JOHN J. WILLIAMS HIGHWAY) AND BEING IN LEWES – REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE”.**

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Old  
Business  
C/Z  
No. 1526**

**The County Council discussed Change of Zone No. 1526 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 385.161 ACRES, MORE OR LESS” filed on behalf of Bay Forest, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on December 11, 2003. On January 8, 2004 the Commission recommended that the application be approved with twenty-one conditions.**

**Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s findings and recommendations. The summary was admitted as part of the County Council’s record.**

**The County Council held a Public Hearing on this application on January 6, 2004 at which time action was deferred.**

**Mr. Cole referred to Condition No. 11 recommended by the Commission, which states that “Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.” He stated that the wording should include the name(s) of the regulatory agency(ies). It was the consensus of Council that this change be made.**

**Mr. Cole referred to Condition No. 18 recommended by the Commission, which states that “The Applicant, its successors or assigns, shall operate and maintain a community shuttle bus service connecting to bus stops operated by DART. The service and location shall be subject to review and comment by DART and DelDOT and subject to site plan review by the Commission. The service and any related improvements shall be completed within two (2) years of the issuance of the first building permit.” Mr. Cole recommended that the condition stipulate that any beach shuttle service would be directed to State Park beaches. Mr. Cole stated that the coastal towns are being negatively impacted by the growing number of shuttle buses. There was no consensus to amend Condition No. 18.**

**M 199 04  
Adopt  
Ordinance**

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Ordinance No. 1670 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN**

**No. 1670**  
**(C/Z**  
**No. 1526)**      **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 385.161 ACRES, MORE OR LESS” (Change of Zone No. 1526) filed on behalf of Bay Forest, LLC, with the following conditions:**

- M 199 04**  
**(continued)**
- 1. The maximum number of residential units shall not exceed 808 units as shown on the Developer’s preliminary site plan, as follows:**
    - 244 – 85-foot single family lots**
    - 149 – 70-foot single family lots**
    - 88 – 28-foot by 42-foot cottages**
    - 177 – 34-foot villas**
    - 68 – 30-foot villas**
    - 82 – 22-foot townhouses**
  - 2. No more than 150 residential building permits shall be issued in any given calendar year.**
  - 3. Site Plan review shall be required for each phase of development.**
  - 4. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's August 5, 2003 letter, or in accordance with any further modification required by DelDOT.**
  - 5. An underground gas storage facility for service to this development shall be permitted subject to approval by the Office of the State Fire Marshal, and other agencies with jurisdiction, and subject to final site plan approval by the Commission. The facility shall be no less than 50-feet from adjacent properties.**
  - 6. A water storage tower shall be permitted subject to final site plan approval by the Commission.**
  - 7. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2-years of the issuance of the first building permit. These recreational facilities shall include tennis courts, swimming pool, community buildings including a meeting room with environmental and educational interpretation displays and a library, pathways and trails.**
  - 8. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.**
  - 9. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
  - 10. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements per review and approval by the County Engineering Department and the Sussex Conservation District.**
  - 11. The Applicant, its successors and/or assigns, including a homeowners or condominium association that will be formed, shall operate the stormwater management facilities in a manner that is consistent with Best Management Practices (BMPs).**

12. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. Street design shall include sidewalks on at least one side of the streets and street lighting. There shall not be any vehicular crossings over streams on the property.

**M 199 04**  
**(continued)**

13. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, and the proposed reforestation program.
14. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00am and 6:00pm.
15. The Applicant shall cause to be formed a homeowners or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
16. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
17. Within one (1) year of the approval of the master plan, the Applicant shall coordinate with the State, County and other local emergency planning offices in the development and implementation of emergency evacuation procedures for the project.
18. The Applicant, its successors or assigns, shall operate and maintain a community shuttle bus service connecting to bus stops operated by DART. The service and location shall be subject to review and comment by DART and DelDOT and subject to site plan review by the Commission. The service and any related improvements shall be completed within two (2) years of the issuance of the first building permit.
19. State wetlands shall not be included in any individual lots. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permit.
20. No piers, docks, boat ramps, or other water related recreational facilities shall be permitted except the existing marina with a kayak/canoe facility which shall be operated by the Developer or a homeowners or condominium association. Motorized boats shall not exceed four (4) pontoon type boats.
21. A barrier in the form of a vegetated berm shall be created along the common boundary of the development and William Derrickson to shield and separate the development from Mr. Derrickson's property.

**Motion Adopted:** 4 Yea, 1 Nay.

**Vote by Roll Call:** Mr. Phillips, Yea; Mr. Cole, Nay;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea

**Public  
Hearing/  
Cluster  
Develop-  
ment  
Ordinance**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE IV “AR-1 AND AR-2 AGRICULTURAL RESIDENTIAL DISTRICTS” TO ALLOW CLUSTER DEVELOPMENT OF RESIDENTIAL STRUCTURES AND TO DEFINE CLUSTER DEVELOPMENT”.**

**Public  
Hearing/  
Cluster  
Develop-  
ment  
(continued)**

**The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on February 26, 2004 at which time they deferred action and left the record open for written comments for a period of fifteen days, ending on March 12, 2004. Mr. Rick Kautz, Land Use Planner, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the County Council’s record.**

**Mr. Kautz reported that, on March 12, 2004, a follow-up letter was received from the Office of State Planning Coordination relating to their support of the Proposed Ordinance and recommendations pertaining to a conservation design approach and a definition for open space. No additional comments were received.**

**Mr. Kautz pointed out that a revised proposed ordinance was prepared for the Commission’s and the County Council’s consideration. The revised proposed ordinance reduces the lot size from 20,000 square feet to 7,500 square feet for cluster developments; deletes churches, schools, and commercial uses from the net development calculation; offers standard and cluster development options; alters setbacks; and adds design requirements and review procedures.**

**Mr. Tom Shafer, Land Use Consultant, noted that a minimum open space of 30 percent is included in the proposed ordinance. He further noted that it is the intent, based on the Land Use Plan Update, to revise the County’s current Open Space Ordinance to include a definition of open space and a method of calculating open space. He recommended that a separate Open Space Ordinance be considered at the same time this proposed ordinance is considered.**

**Mr. Shafer reported that numerous suggestions have been received relating to the language in the proposed ordinance and that there will be a thorough review of the suggestions.**

**Mr. Shafer stated that the essence of the amendment is to allow cluster development in an AR District that will be both in the development areas and outside of the development areas, keeping the same 20,000 square foot lot density.**

**Mr. Griffin made a recommendation to include in the proposed ordinance, under the heading of definitions, that open space and the method of calculating open space would be determined pursuant to the County’s Open Space Ordinance.**

**Public comments were heard.**

**Public  
Hearing/  
Cluster  
Develop-  
ment  
(continued)**

Preston Dyer spoke regarding density calculations and minimum lot size. Mr. Dyer stated that he wanted Mr. Cole's comment in the record that "the Environmentally Sensitive District...which is where our Development District is, is where we are supposed to be encouraging development..."

Kevin Burdette of McCrone, Inc. presented comments and suggestions relating to minimum lot size, net development area, design requirements, definition of a rolling berm, required height for fencing, definition of State maintained roads, sketch plan and preliminary plan requirements, and removing reference to the Sussex County Council in the approval process. Mr. Burdette provided a handout highlighting his recommended changes.

Rich Collins of the Positive Growth Alliance stated that cluster development with open space is preferable than having "a house in every block in every spot that we look"; that the proposed ordinance does not increase density; that he does not think central water and sewer should be deducted from net density; that a plan is not necessary for the management of open space; that the intent of the proposed ordinance is to create open space; and that the proposed ordinance provides that the "cluster development plan will preserve the natural environment" and this should be deleted since it would not permit golf courses.

William Payne commented on the open space and woodlands requirement, net density calculation, groundwater, and septic systems. Mr. Payne stated that he believes the proposed ordinance should be rewritten in a more detailed format, re-advertised, and another Public Hearing held.

Mr. Cole expressed concern about taking the County Council out of the approval process.

Glenn Urquhart commented that the proposed ordinance provides an opportunity to create open space; that it provides for a higher quality of agriculture; and that clean water from advanced wastewater systems offers benefits. Mr. Urquhart made recommendations relating to the review procedures for cluster development and provided a handout explaining his recommendations.

Roger Smith commented on the density calculation, minimum lot size, and affordability of land.

There were no further public comments.

It was the consensus of the County Council to close the Public Hearing, to defer action, and to leave the record open for written comments on the final draft of the Proposed Ordinance.

**Public**

A Public Hearing was held on the Proposed Ordinance entitled "AN

**Hearing**                    **ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO REVISE AND REPLACE SECTION 194.1 WITH A NEW SECTION ENTITLED THE COMBINED HIGHWAY CORRIDOR OVERLAY ZONE”.**

**Public  
Hearing/  
Highway  
Corridor  
Overlay  
Zone**                    **The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on February 26, 2004 at which time they deferred action and left the record open for written comments for a period of fifteen days, ending on March 12, 2004. Mr. Rick Kautz, Land Use Planner, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the County Council’s record.**

**Mr. Kautz reported that no additional comments were received by the Planning and Zoning Commission.**

**Tom Shafer, Land Use Consultant, stated that currently there is a Corridor Overlay Zone that exists between Five Points and Route 273 and the Proposed Ordinance would expand the Corridor Overlay Zone to include all of Route 1, Route 113, Route 13, and the major east-west routes (classified as evacuation routes).**

**Public comments were heard.**

**Wayne Baker stated that the proposed ordinance, if adopted, would result in a “taking” of land and that the County Council would be setting aside private property for public use at a later date.**

**Dan Kramer questioned whether a property owner would have to comply with the proposed ordinance if an existing building had to be replaced.**

**Rich Collins of the Positive Growth Alliance stated that there have been many negative comments regarding the Proposed Ordinance; that a massive amount of land is affected, most of which is not in a Development Zone; that it should be clarified that the buffer is part of the setback; that commercial zoning would be prohibited on the lands; that a small lot could be rendered unusable; that the landscape requirements have no flexibility; and that DelDOT has authority on access and not the County.**

**Preston Dyer stated that the original Ordinance was adopted in 1996; that it was a 600-foot commercial corridor on Route One, a major highway; that the east-west corridors are two-lane roads and the 300-foot and 600-foot boundaries are not relative to the routes; that the Proposed Ordinance is dangerous; that the content of the Proposed Ordinance conflicts with many applications before DelDOT; that DelDOT considers each development separately; that the Proposed Ordinance is aimed at increasing landscaping requirements; and that a \$0 value will be given to the extra 20-foot setback that will be required and will result in a taking of land. Mr. Dyer**

questioned why water features are permitted in a required buffer and a stormwater management structure is not.

Dave Stevenson stated that something different is needed to address small lots and lots with small road frontage; that some kind of adjustment is needed; that the Proposed Ordinance will result in a “grabbing of land” and will result in a loss of land value and income on commercial property.

**Public  
Hearing/  
Highway  
Corridor  
Zone**

Glenn Urquhart commented that the Proposed Ordinance will be a condemnation of land and may cause future problems.

William Payne spoke in support of a Corridor Overlay Zone.

**(continued)**

Bill Andrew of Delaware Electric Cooperative expressed concern regarding the limitations and restrictions of the proposed ordinance which will affect Delaware Electric Cooperative and their customers; that they should not be limited to the installation of utility lines; that the proposed ordinance should refer instead to utility infrastructure; that the planting of trees in a utility right-of-way needs to be done with long-term in mind; and that the Cooperative will provide a recommended list of plants and trees, upon request.

R. C. Willin stated that the content of the Proposed Ordinance is not the County’s responsibility; that the proposal will make all the other corridors another Route One; and that a limited east-west corridor is needed in the County.

There were no further public comments.

It was the consensus of Council to close the Public Hearing and to defer action.

**Recess**

Mr. Dukes declared a recess at 2:05 p.m.

**Reconvene**

Mr. Dukes called Council back into session at 2:25 p.m.

**Building  
Code  
Workshop**

A workshop was held in regard to the County’s conversion to the 2003 International Building Code and more specifically, to determine the County Council’s recommendation for a 110 mph wind zone delineation line.

Mr. Dukes announced that a workshop will also be held on Saturday, March 27, 2004, from 9:00 a.m. to 12:00 p.m. at the CHEER Center located on Sand Hill Road in Georgetown. Property owners, builders, contractors, engineers, and architects are encouraged to attend. The public will be permitted to comment at this workshop.

Bill Massey of the City of Lewes and a member of the IRC and IBC Committee, provided information from the ISO pertaining to mitigating hurricane losses as they relate to building construction and a wind zone delineation line.



**Building  
Code  
Workshop  
(continued)**

Mr. Massey stated that the IRC and IBC Committee is proposing, based on expert advice, a delineation line that is more effective by sight as well as close in range to a one mile east/west distance across. They chose a starting point at the Lewes – Rehoboth Canal beginning at the Roosevelt Inlet, south through the Canal, hitting Rehoboth Bay and shooting across to Massey's Landing, running through Massey's Landing, out to the Indian River Bay, across to the Assawoman Bay and Assawoman Canal, and south to a dead-end spot to include Fenwick Island at the Maryland-Delaware Line. This line takes in Dewey Beach, Bethany Beach, Rehoboth Beach, South Bethany, Fenwick Island, and a portion of Ocean View.

Mr. Massey stated that the Committee believes that Route One is not a good delineation line since the area is less than 1/2 of mile in width in some locations.

Representatives of Dewey Beach and Bethany Beach spoke in favor of the delineation line, as proposed.

Mr. Massey discussed other issues relating to the building code and hurricanes including the type of materials used and the cost of those materials. He reported on three options that are available to mitigate hurricane losses and which relate to structural integrity, certificate of occupancy compliance, and insurance requirements: (1) storm shutters or other protective devices for doors and windows, (2) high impact windows, or (3) having plywood cut to size and ready to cover windows in the event of a hurricane.

The County Council discussed their position on what the best location for the wind zone delineation line.

**M 200 04  
Adopt  
Wind  
Zone  
Map**

A Motion was made by Mr. Cole, seconded by Mr. Jones to adopt the IRC and IBC Committee's recommended wind zone map (hurricane delineation line).

**Motion Adopted: 5 Yea.**

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Building  
Code  
Workshop  
(continued)**

Mr. Massey reported that the University of Delaware, Sea Grant Program, will be offering seminars relating to building code information.

Mr. Massey distributed a handout highlighting some differences in the 2000 IRC versus the 2003 IRC. He noted that the changes are a clean-up of the 2003 IRC.

Mr. Dukes informed Mr. Massey and Mr. Van Milligan, Sussex County

**Building Code Supervisor, of several questions that have been submitted to him relating to the 2003 IRC.**

**Mr. Dukes read a letter into the record from the AIA of Delaware, a member of the Delaware Institute of Architects, relating to the seal of registered architects.**

**Building  
Code  
Workshop  
(continued)**

**Mr. Milligan requested that the flood zone be deleted from the International Code since the County's Planning and Zoning Department has a flood zone requirement.**

**Mr. Milligan reported that the Office of the State Fire Marshall has a concern regarding storm shutters and the possibility that firemen may not be able to get in or out of a building. In addition, they are recommending that the requirement remain that three-story townhouses have sprinkling systems.**

**The County Council discussed the fact that the County has not adopted a Mechanical Code.**

**The workshop concluded.**

**Introduction  
of  
Proposed  
Ordinance**

**Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FAMILY PRACTICE MEDICAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.162 ACRES, MORE OR LESS" (Conditional Use No. 1571) filed on behalf of Mid-Atlantic Property Ventures, L.L.C. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction  
of  
Proposed  
Ordinance**

**Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GUEST HOUSE AND SURVEYING OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.0652 ACRES, MORE OR LESS" (Conditional Use No. 1572) filed on behalf of Donald K. Miller. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction  
of  
Proposed  
Ordinance**

**Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MEDICAL/ PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.40 ACRES, MORE OR LESS" (Conditional Use No. 1573) filed on behalf of Robert Burton, Double R Holdings, LLC. The Proposed Ordinance will be advertised for Public**

**Hearing.**

**M 201 04  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Jones, to adjourn at 3:28 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

**Robin A. Griffith  
County Clerk**